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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-901**

James Mark Vogel, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed February 22, 2011
Affirmed; motion denied
Kalitowski, Judge**

Aitkin County District Court
File No. 10-CR-09-175

David W. Merchant, Chief Appellate Public Defender, Ngoc Nguyen, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James P. Ratz, Aitkin County Attorney, Lisa Roggenkamp Rakotz, Senior Assistant County Attorney, Aitkin, Minnesota (for respondent)

Considered and decided by Minge, Presiding Judge; Lansing, Judge; and Kalitowski, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant James Mark Vogel challenges the district court's denial of his motion to withdraw his guilty plea to first-degree driving while impaired, arguing that his plea was

not intelligently and voluntarily entered. We affirm and deny appellant's motion to submit new evidence and an additional pro se supplemental brief.

D E C I S I O N

The state charged appellant with two counts of first-degree driving while impaired (DWI) and one count of driving after his driving privileges were canceled as inimical to public safety. Appellant pleaded guilty to one count of first-degree DWI, in violation of Minn. Stat. § 169A.20, subd. 1(5) (2008) (prohibiting alcohol concentration of .08 or more within two hours of driving). Pursuant to the plea agreement, the district court dismissed the remaining charges and sentenced appellant to 65 months in prison and 5 years of conditional release to run concurrently with his sentence for a previous conviction of first-degree DWI. Several months after sentencing, appellant moved to withdraw his guilty plea. After holding a hearing on the motion, the district court denied appellant's motion.

A criminal defendant does not have an absolute right to withdraw a guilty plea. *State v. Theis*, 742 N.W.2d 643, 646 (Minn. 2007). Once sentenced, a defendant may withdraw a plea of guilty if withdrawal "is necessary to correct a manifest injustice." Minn. R. Crim. P. 15.05, subd. 1. Manifest injustice occurs when a guilty plea is not accurate, voluntary, and intelligent. *Perkins v. State*, 559 N.W.2d 678, 688 (Minn. 1997).

District courts have broad discretion in deciding whether to permit withdrawal of a guilty plea, and a reviewing court will reverse only if the district court abused its discretion. *Barragan v. State*, 583 N.W.2d 571, 572 (Minn. 1998). We will sustain the postconviction court's findings if they are supported by sufficient evidence. *State v.*

Ecker, 524 N.W.2d 712, 716 (Minn. 1994). When credibility determinations are crucial, we defer to the district court's primary observations and trustworthiness assessments. *State v. Aviles-Alvarez*, 561 N.W.2d 523, 527 (Minn. App. 1997), *review denied* (Minn. June 11, 1997).

The record indicates that appellant was in custody in the Aitkin County jail for six months between his arrest and guilty plea. Appellant argues that his plea was not voluntary and intelligent because he was experiencing persistent abdominal pain, was refused proper medical treatment in jail, and pleaded guilty to receive better medical care in prison. After being transferred to prison, appellant was diagnosed with mantle cell lymphoma. Appellant submitted his medical records from jail at the plea-withdrawal hearing.

“The voluntariness requirement insures that a guilty plea is not entered because of any improper pressures or inducements.” *James v. State*, 699 N.W.2d 723, 728 (Minn. 2005) (quotation omitted). At the plea hearing, appellant testified that no one made a threat or promise to get him to plead guilty, that the medications he was taking did not “infringe upon [his] decisions,” and that he was “thinking clearly enough to make court decisions.” Appellant signed a plea petition to the same effect. The district court also gave appellant an opportunity to raise any concerns he had to the court, which appellant declined.

Appellant's medical records show that he did not raise the issue of his abdominal pain or the need for testing during his jail intake screening in February 2009, contrary to his testimony at the plea-withdrawal hearing. And few of his requests for medical

attention while in jail concerned abdominal pain, again contradicting his testimony. Appellant was referred to a nurse practitioner in response to several of his requests but did not discuss this pain with the nurse practitioner until late July 2009 and attributed it to constipation caused by his recent confinement. The nurse practitioner prescribed a laxative but asked jail staff to contact her if the pain persisted or worsened.

In a case involving similar facts, the Minnesota Supreme Court rejected an appellant's argument that his plea was involuntary because he pleaded guilty to receive better medical attention in prison. *Perkins*, 559 N.W.2d at 690-91. The Court reasoned that the plea was voluntary because the record showed that the appellant received appropriate medical care, stated that he was competent to understand the proceedings at the plea hearing, and failed to raise concerns about his health and his reason for pleading guilty with the district court or his attorney when given the opportunity at the plea and sentencing hearings. *Id.* And this court has concluded that an appellant's plea was voluntary when the record did not support her claim that she pleaded guilty because she was depressed, under duress, and inadequately advised by her attorney. *Williams v. State*, 760 N.W.2d 8, 14 (Minn. App. 2009), *review denied* (Minn. Apr. 21, 2009). In light of appellant's medical records documenting his care and his statements at his plea hearing and in his plea petition, we conclude that the postconviction court did not abuse its discretion when it determined that appellant's plea was voluntary.

The requirement that a guilty plea is entered intelligently "insures that the defendant understands the charges, his or her rights under the law, and the consequences of pleading guilty." *Alanis v. State*, 583 N.W.2d 573, 577 (Minn. 1998). The record

supports the postconviction court's finding that appellant's plea was intelligent. Appellant stated at the plea hearing that his medications did not infringe on his decision-making. He testified that he understood he was giving up his trial rights and had received sufficient time to consult with his attorney. Appellant also stated that he understood his sentence would include a conditional-release period and that his felony conviction could be the basis for enhancing future driving violations. Because the record demonstrates that appellant understood the proceeding and the consequences of his plea, we conclude that appellant failed to show that his plea was not made intelligently.

In his pro se supplemental brief, appellant requests a modification of his sentence. The plea agreement specified the terms of the sentence and stated that if the district court did not approve the agreement, appellant could withdraw his plea. In return, the state dismissed the other charges. Because the record does not demonstrate a basis for plea withdrawal, the district court did not abuse its discretion by declining to modify the sentence that appellant and the state negotiated.

Appellant moved this court to accept an additional pro se supplemental brief and new evidence in late November 2010, over three months after the deadline for submitting a pro se supplemental brief. *See* Minn. R. Crim. P. 28.02, subds. 5(17) (requiring pro se supplemental briefs to be filed within 30 days after the state public defender's office files its initial brief); 8 (stating that the record on appeal consists of the papers filed in district court, the offered exhibits, and the transcript). Because filing deadlines are crucial to allowing both parties to address the issues raised on appeal and to ensuring that this court can reach a timely resolution of each case, we deny appellant's motion. Moreover, even

if we were to consider the additional submission, which consisted of documentation that appellant was denied General Medical Assistance Care because he was in custody, it would not change our conclusion that appellant's guilty plea was intelligent and voluntary.

We are not unsympathetic to the fact that appellant is confronting a serious illness that threatens to end his life before he is released from incarceration. But we are presented with a petition for plea withdrawal, and appellant has failed to establish a legal basis for withdrawal of his guilty plea.

Affirmed; motion denied.